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Date

1/04/01

Conrad O. Gardner

#17
4-26-02

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Conrad O. Gardner
Application No.: 08/896,514
Filing Date: 06/23/97

Group Art Unit: 3619
Examiner: M. Mar
Docket No.: 95-004M
Date: Jan 4, 2001

For: Extended Range Motor Vehicle Having Ambient Pollution Processing

Attention: Board of Patent Appeals and Interferences
Assistant Commissioner for Patents
Washington, D.C. 20231

BRIEF ON APPEAL

Sir:

Applicant files this Brief on Appeal in triplicate within the two month period for such response following the filing of a Notice of Appeal on November 28, 2000.

A check in the amount of \$ 155.00 is enclosed for filing this Brief (small entity).

I. REAL PARTY IN INTEREST

The real party in interest in this appeal is the applicant.

II. RELATED APPEALS AND INTERFERENCES

Applicant does not know of any other appeals or interferences that directly affect or will be directly affected by the Board's decision in this appeal.

III. STATUS OF CLAIMS

1. Claims pending: 30-41 and 46-61
2. Claims withdrawn from consideration: 30-33
3. Claim allowed: 61
4. Claims rejected: 34-41 and 46-60
5. Claims on appeal: 34-41 and 46-60

IV. STATUS OF AMENDMENTS

Amendment after Final Rejection filed October 26, 2000 entered by Advisory Action
Dated November 9, 2000.

V. SUMMARY OF THE INVENTION

A precise summary of the invention appears at page 2, lines 16-26 of the specification.

VI. ISSUES

1. Whether claims 55-60 are indefinite under 35 USC 112.
2. Whether claim 55 is anticipated by Kenyon (U.S.P. 4,438,342) under 35 USC 102(b).
3. Whether claim 55 is anticipated by Kim (U.S.P. 4,953,646) under 35 USC 102(b).
4. Whether claims 55-60 are anticipated by Ellers (U.S.P. 4,923,025) under 35 USC 102(b).
5. Whether claims 34, 35, 37, 40 & 50-54 are unpatentable over Ellers (U.S.P. 4,923,025) under 35 USC 103(a).
6. Whether claim 36 is unpatentable over Ellers (U.S.P. 4,923,025) in view of Fields et al (U.S.P. 4,351,405) under 35 USC 103(a).
7. Whether claims 38, 39 & 41 are unpatentable over Ellers (U.S.P. 4,923,025) in view of Miyake et al (U.S.P. 5,048,374) under 35 USC 103(a).
8. Whether claims 46-49 are unpatentable over Kenyon (U.S.P. 4,438,342) in view of Lynch et al (U.S.P. 4,165,795) under 35 USC 103(a).

VII. GROUPING OF CLAIMS

Each claim stands separately; arguments for the patentability of each claim appear in

the Argument section.

VIII. ARGUMENT

1. Whether claims 55-60 are indefinite under 35 USC 112.

The Examiner argues (Point 2, page 2 of the Final Rejection, Paper Number 40) that:

"Claim 55 is vague and unclear as to what power source provides the "instant powerful acceleration" and what is meant by "the cruise mode". The recitation " when the speed of the vehicle is dropping" is also vague and unclear.

Claim 55 has been amended by the Amendment after Final Rejection which was entered by Advisory Action and now reads:

55. A method of operating a hybrid vehicle having electric motor and internal combustion engine power comprising:

- a. rapidly capturing power from a continuously running low horsepower internal combustion engine to charge a fast charge-discharge battery without loss of power; and,
- b. providing instant powerful acceleration by operator depression of the throttle pedal to provide electric propulsion while in the cruise mode when the speed of the vehicle is dropping.

The meaning of every term used in the claim questioned by the Examiner is apparent from the descriptive portion of the specification 608.01(o) M.P.E.P. Also " The specification can always be used to learn the meaning of a term in the patent claim" In *Re Boylan*, 392 F.2nd 1017, 157 USPQ (CCPA 1970) at M.P.E.P. 804 (column 2). In any event, applicant has now included the answer to the question of " how instant